

(46 U.S.C. 1111(c)), the Federal Maritime Commission hereby prescribes its official seal, as adopted by the Commission on August 14, 1961, the design of which is illustrated below and described as follows:

(1) A shield argent paly of six gules, a chief azure charged with a fouled anchor or; shield and anchor outlined of the third; on a wreath argent and gules, an eagle displayed proper; all on a gold disc within a blue border, encircled by a gold rope outlined in blue, and bearing in white letters the inscription "Federal Maritime Commission" in upper portion and "1961" in lower portion.

(2) The shield and eagle above it are associated with the United States of America and denote the national scope of maritime affairs. The outer rope and fouled anchor are symbolic of seamen and waterborne transportation. The date "1961" has historical significance, indicating the year in which the Federal Maritime Commission was created.

### § 501.3 Design.



## PART 502—RULES OF PRACTICE AND PROCEDURE

### Subpart A—General Information

Sec.	
502.1	Scope of rules.
502.2	Mailing address; hours.
502.3	Compliance with rules or orders of Commission.
502.4	Authentication of rules or orders of the Commission.
502.5	Inspection of records.
502.6	Fees and charges for special services.
502.7	Documents in foreign language.
502.8	Denial of applications and notice thereof.
502.9	Suspension, amendment, etc., of rules.

### Subpart B—Appearances and Practice Before the Commission

Sec.	
502.21	Appearance in person or by representative.
502.22	Authority for representation.
502.23	Written appearance.
502.24	Practice before the Commission defined.
502.25	Attorneys at law.
502.26	Persons not attorneys at law.
502.27	Firms and corporations.
502.28	Hearings.
502.29	Suspension or disbarment.
502.30	Statement of interest.
502.31	Former employees.

### Subpart C—Parties

502.41	Parties; how designated.
502.42	Counsel for the Commission.
502.43	Substitution of parties.

### Subpart D—Rulemaking

502.51	Petition for issuance, amendment, or repeal of rule.
502.52	Notice of proposed rulemaking.
502.53	Participation in rulemaking.
502.54	Contents of rules.
502.55	Effective date of rules.

### Subpart E—Proceedings; Pleadings; Motions; Replies

502.61	Proceedings.
502.62	Complaints.
502.63	Reparation, statute of limitations.
502.64	Joinder of actions and parties.
502.65	Answer to complaint.
502.66	Replies to answers not permitted.
502.67	Order to show cause.
502.68	Proceedings under section 3 of the Intercoastal Shipping Act, 1933.
502.69	Declaratory orders.
502.70	Petitions—general.
502.71	Amendments or supplements to pleadings.
502.72	Bill of particulars.
502.73	Petition for intervention.
502.74	Motions.
502.75	Replies to pleadings, motions, applications, etc.

### Subpart F—Settlement; Prehearing Procedure

502.91	Opportunity for informal settlement.
502.92	Voluntary payment of reparation.
502.93	Satisfaction of complaint.
502.94	Prehearing conference.

### Subpart G—Time

502.101	Computation.
502.102	Additional time to file documents.
502.103	Enlargement of time to file documents.
502.104	Reduction of time to file documents.
502.105	Postponement of hearing.

### Subpart H—Form, Execution, and Service of Documents

502.111	Form and appearance of documents filed with Commission.
---------	---

- Sec.  
 502.112 Subscription and verification of documents.  
 502.113 Service by the Commission.  
 502.114 Service by parties.  
 502.115 Date of service.  
 502.116 Certificate of service.  
 502.117 Copies of documents for use of the Commission.

#### Subpart I—Subpenas

- 502.131 Applications; issuance.  
 502.132 Attendance and mileage fees.  
 502.133 Service of subpenas.

#### Subpart J—Hearings; Presiding Officers; Evidence

- 502.141 Hearings not required by statute.  
 502.142 Hearings required by statute.  
 502.143 Notice of nature of hearing, jurisdiction, and issues.  
 502.144 Notice of time and place of hearing.  
 502.145 Presiding officer.  
 502.146 Commencement of functions of Hearing Examiners' Office.  
 502.147 Authority of presiding officer.  
 502.148 Postponement or change of place by presiding officer.  
 502.149 Disqualification of presiding or participating officer.  
 502.150 Further evidence required by presiding officer during hearing.  
 502.151 Exceptions to rulings of presiding officer unnecessary.  
 502.152 Offer of proof.  
 502.153 Appeal from ruling of presiding officer.  
 502.154 Rights of parties as to presentation of evidence.  
 502.155 Burden of proof.  
 502.156 Evidence admissible.  
 502.157 Written evidence.  
 502.158 Documents containing matter not material.  
 502.159 Copies of exhibits.  
 502.160 Records in other proceedings.  
 502.161 Commission's files.  
 502.162 Stipulations.  
 502.163 Receipt of documents after hearing.  
 502.164 Oral argument at hearings.  
 502.165 Official transcript.  
 502.166 Corrections of transcript.  
 502.167 Objection to public disclosure of information.  
 502.168 Copies of data or evidence.  
 502.169 Record for decision.

#### Subpart K—Shortened Procedure

- 502.181 Selection of cases for shortened procedure; consent required.  
 502.182 Complainant's memorandum of facts and argument.  
 502.183 Respondent's answering memorandum.  
 502.184 Complainant's memorandum in reply.  
 502.185 Service of memoranda upon and by interveners.  
 502.186 Contents of memoranda.

- Sec.  
 502.187 Procedure after filing of memoranda.

#### Subpart L—Depositions and Discovery

- 502.201 Request for orders to take; time of filing; contents.  
 502.202 Contents of order.  
 502.203 Record of examination; oath; objections.  
 502.204 Submission to witness; changes; signing.  
 502.205 Certification and filing by officer; copies.  
 502.206 Waiver of objections and admissibility.  
 502.207 Time of filing.  
 502.208 Inclusion in record.  
 502.209 Witness fees; expenses of taking depositions.  
 502.210 Depositions taken or authorized by presiding officer.  
 502.211 Discovery and production of documents.

#### Subpart M—Briefs; Requests for Findings; Decisions; Exceptions

- 502.221 Briefs; requests for findings.  
 502.222 Requests for enlargement of time for filing briefs.  
 502.223 Reopening of case by presiding officer prior to decision.  
 502.224 Decisions—authority to make and kinds.  
 502.225 Separation of functions.  
 502.226 Decisions—contents and service.  
 502.227 Decision based on official notice.  
 502.228 Exceptions to, and review by Commission of, decisions.  
 502.229 Replies to exceptions.  
 502.330 Request for enlargement of time for filing exceptions and replies thereto.  
 502.231 Certification of record by presiding or other officer.

#### Subpart N—Oral Argument; Submittal for Final Decision

- 502.241 Oral argument.  
 502.242 Submittal to Commission for final decision.

#### Subpart O—Preparation

- 502.251 Proof on award of reparation.  
 502.252 Reparation statements.

#### Subpart P—Reopening of Proceedings

- 502.261 Reopening by Commission and modification or setting aside of report or order.  
 502.262 Petition for reopening.  
 502.263 Stay of rule or order.  
 502.264 Time for filing petition to reopen.  
 502.265 Reply to petition to reopen.

#### Subpart Q—Judicial Review

- 502.271 Appeal from initial decision necessary before judicial review.

**Subpart R—Schedules and Forms**

- 502.281 Schedule of information for presentation in cases; approved forms.

**Subpart S—Non-Adjudicatory Investigations**

- 502.291 Investigational policy.  
 502.292 Initiation of investigations.  
 502.293 Order of investigation.  
 502.294 By whom conducted.  
 502.295 Investigational hearings.  
 502.296 Compulsory processes.  
 502.297 Depositions.  
 502.298 Reports.  
 502.299 Non-compliance with investigational processes.  
 502.300 Rights of witnesses.  
 502.301 Non-public proceedings.  
 502.302 Referrals after investigation.

**AUTHORITY:** The provisions of this Part 502 issued under sec. 204, 49 Stat. 1987, sec. 7, 75 Stat. 766, secs. 3, 12, 60 Stat. 238, 244, sec. 43 of the Shipping Act, 1916; 46 U.S.C. 1114, 841a, 5 U.S.C. 1002, 1011.

**SOURCE:** The provisions of this Part 502 contained in General Order 8, Part II, 28 F.R. 12205, Nov. 16, 1963, unless otherwise noted.

**Subpart A—General Information****§ 502.1 Scope of Rules.**

The rules in this part govern procedure before the Federal Maritime Commission, hereinafter referred to as the "Commission," under the Shipping Act, 1916, Merchant Marine Act, 1920, Intercoastal Shipping Act, 1933, Merchant Marine Act, 1936, Administrative Procedure Act, and related acts, except as may be provided otherwise by the Commission. They shall be construed to secure the just, speedy, and inexpensive determination of every proceeding.

**§ 502.2 Mailing address; hours.**

Documents required to be filed in, and correspondence relating to, proceedings governed by the rules in this part should be addressed to "Federal Maritime Commission, Washington, D.C., 20573." The hours of the Commission are from 8:30 a.m. to 5:00 p.m., Monday to Friday, inclusive, unless otherwise provided by Federal statute or executive order.

**§ 502.3 Compliance with rules or orders of Commission.**

Persons named in a rule or order shall notify the Commission during business hours on or before the day on which such rule or order becomes effective whether they have complied therewith, and, if so the manner in which compliance has been made. If a change in rates is required, the notification shall specify the tariffs which effect the changes.

**§ 502.4 Authentication of rules or orders of the Commission.**

All rules or orders issued in any proceeding covered by the rules in this part shall, unless otherwise specifically provided by the Commission, be signed and authenticated by seal by the Secretary of the Commission in the name of the Commission.

**§ 502.5 Inspection of records.**

(a) The files and records of the Commission, except those held by the Commission for good cause to be confidential, shall be open for inspection and copying as follows:

(1) Tariffs and agreements filed with the Commission pursuant to statute or rule or order of the Commission may be inspected and copied during business hours in the Commission's offices at Washington.

(2) All pleadings, depositions, exhibits, transcripts of testimony, exceptions, and briefs in any statutory proceeding before the Commission may be inspected and copied at the Washington office of the Commission. Available volumes of Federal Maritime Commission reports may be purchased from the Superintendent of Documents, Government Printing Office, Washington 25, D.C. Copies of individual decisions may be secured from the Commission upon request, or may be examined in the regional offices of the Commission.

(3) Other files and records may be inspected and copied in the discretion of the Commission upon written request to the Secretary describing in detail the documents of which inspection is desired, and setting forth the reasons therefor.

(b) Orders, rules, rulings, opinions, and decisions (initial, recommended, tentative, and final) may be inspected at the Washington office of the Commission, except those held by the Commission for good cause to be confidential and not cited as precedents.

**§ 502.6 Fees and charges for special services.**

(a) *Policy and services available.* Pursuant to policies established by the Congress, the Government's costs for special services furnished to individuals or firms who request such service are to be recovered by the payment of fees (Act of August 31, 1951—5 U.S.C. 140). Upon written request directed to and within the discretion of the Federal Maritime

Commission, there are available upon payment of the fees hereinafter prescribed, with respect to documents subject to inspection, services as follows:

- (1) Copying records/documents.
- (2) Certification of copies of documents.
- (3) Records search.
- (4) Subscriptions to publications of the Commission.
- (5) Transcripts of hearings.

(b) *Payment of fees and charges.* The fees charged for special services may be paid by check, draft, or postal money order, payable to the Federal Maritime Commission, except for charges for transcript of hearings. Fees for transcript of hearings are payable to the firm providing the services.

(c) *Fees for services.* The basic fees set forth below provide for documents to be mailed with ordinary first class postage prepaid. If copy is to be transmitted by registered, certified, air or special delivery mail, postage therefor will be added to the basic fee. Also, if special handling or packaging is required, costs thereof will be added to the basic fee.

(1) The copying of records and documents will be available at the rate of 25 cents per page (one side) by the Xerox process, limited to size 8¼" x 14" or smaller.

(2) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at \$1.00 for each such certification.

(3) To the extent that time can be made available, records and information search will be performed for reimbursement at the following rates:

(i) By clerical personnel at a rate of \$4.00 per person per hours.

(ii) By professional personnel at an actual hourly cost basis to be established prior to search.

(iii) Minimum charge \$2.00.

(4) Annual subscriptions to Commission publications for which there are regular mailing lists are available at the charges indicated below. Subscriptions will be available effective January 1, 1965, for a one-year term, and for calendar year terms thereafter. Subscriptions for periods of less than a full calendar year will be prorated on a quarterly basis. No provision is made for refund upon cancellation of subscription by a purchaser.

(i) Orders, notices, rulings and decisions (initial and final) issued by hearing examiners and by the Commission in

all formal docketed proceedings before the Federal Maritime Commission are available at an annual subscription rate of \$30.00.

(ii) Final decisions (only) issued by the Commission in all formal docketed proceedings before the Commission are available at an annual subscription rate of \$10.00.

(iii) General Orders of the Commission, including all proposed and final rules, are available at an annual subscription rate of \$2.00 (initial annual subscription will entitle the purchaser to a complete set of current General orders issued to date).

(iv) Exceptions: No charge will be made by the Commission for notices, decisions, orders, etc., required by law to be served on a party to any proceeding or matter before the Commission. No charge will be made for single copies of Commission publications individually requested, in person or by mail. In addition a subscription to Commission mailing lists will be entered without charge when one of the following conditions is present:

(a) The furnishing of the service without charge is an appropriate courtesy to a foreign country or international organization.

(b) The recipient is another government agency, Federal, State or local, concerned with the domestic or foreign commerce by water of the United States or, having a legitimate interest in the proceedings and activities of the Commission.

(c) The recipient is a college or university.

(d) The recipient does not fall into (a), (b) or (c) above, but is determined by the Commission to be appropriate in the interest of its program.

(5) Transcripts of testimony and of oral argument are furnished by a non-Government contractor, and may be purchased directly from the reporting firm. [Amdt. 2, 29 F.R. 18171, Dec. 22, 1964]

#### § 502.7 Documents in foreign languages.

Every document, exhibit or other paper written in a language other than English and filed with the Commission or offered in evidence in any proceeding before the Commission under the rules in this part or in response to any rule or order of the Commission pursuant to the rules in this part, shall be filed or offered in the language in which it is written and shall be accompanied by an

English translation thereof duly verified under oath to be a true translation.

**§ 502.8 Denial of applications and notice thereof.**

Except in affirming a prior denial or where the denial is self-explanatory, prompt written notice will be given of the denial in whole or in part of any written application, petition, or other request made in connection with any proceeding under the rules in this part, such notice to be accompanied by a simple statement of procedural or other grounds for the denial, and of any other or further administrative remedies or recourse applicant may have where the denial is based on procedural grounds.

**§ 502.9 Suspension, amendment, etc., of rules.**

The rules in this part may, from time to time, be suspended, amended, or revoked, in whole or in part. Notice of any such action will be published in the *FEDERAL REGISTER*. Also, any rule may be waived by the Commission or the presiding officer to prevent undue hardship in any particular case.

**Subpart B—Appearances and Practice Before the Commission**

**§ 502.21 Appearance in person or by representative.**

A party may appear in person or by an officer, partner, or regular employee of the party, or by, or with counsel or other duly qualified representative, in any proceeding under the rules in this part. One who appears under this section may testify, produce and examine witnesses, and be heard upon brief and at oral argument if oral argument is granted.

**§ 502.22 Authority for representation.**

Any individual acting in a representative capacity in any proceeding before the Commission may be required to show his authority to act in such capacity.

**§ 502.23 Written appearance.**

Persons who appear at any hearing shall deliver a written notation of appearance to the reporter, stating for whom the appearance is made. The written appearance shall be made a part of the record.

**§ 502.24 Practice before the Commission defined.**

Practice before the Commission shall be deemed to comprehend all matters

connected with the presentation of any matter to the Commission, including the preparation and filing of necessary documents, and correspondence with and communications to the Commission. The term "Commission" as used herein includes any division, office, branch, section, unit, or field office of the Federal Maritime Commission and any officer or employee of such division, office, branch, section, unit, or field office.

**§ 502.25 Attorneys at law.**

Attorneys at law who are admitted to practice before the Federal courts or before the courts of any State or Territory of the United States may practice before the Commission. An attorney's own representation that he is such in good standing before any of the courts herein referred to will be sufficient proof thereof.

**§ 502.26 Persons not attorneys at law.**

Any person who is not an attorney at law may be admitted to practice before the Commission if he is a citizen of the United States and files proof to the satisfaction of the Commission that he possesses the necessary legal, technical, or other qualifications to enable him to render valuable service before the Commission and is otherwise competent to advise and assist in the presentation of matters before the Commission. Applications by persons not attorneys at law for admission to practice before the Commission shall be made on the forms prescribed therefor, which may be obtained from the Secretary of the Commission, and shall be addressed to the Federal Maritime Commission, Washington, D.C., 20573. No person who is not an attorney at law and whose application has not been approved shall be permitted to practice before the Commission. This provision and the provisions of §§ 502.28, 502.29, and 502.30 shall not apply, however, to any person who appears before the Commission on his own behalf or on behalf of any corporation, partnership, or association of which he is a partner, officer, or regular employee.

**§ 502.27 Firms and corporations.**

Practice before the Commission by firms or corporations on behalf of others shall not be permitted.

**§ 502.28 Hearings.**

The Commission in its discretion may call upon the applicant for a full state-

ment of the nature and extent of his qualifications. If the Commission is not satisfied as to the sufficiency of the applicant's qualifications, it will so notify him by registered mail, whereupon he may request a hearing for the purpose of showing his qualifications. If he presents to the Commission no request for such hearing within 20 days after receiving the notification above referred to, his application shall be acted upon without further notice.

#### § 502.29 Suspension or disbarment.

The Commission may, in its discretion, deny admission to, suspend, or disbar any person from practice before the Commission who it finds does not possess the requisite qualifications to represent others or is lacking in character, integrity, or proper professional conduct. Any person who has been admitted to practice before the Commission may be disbarred from such practice only after he is afforded an opportunity to be heard.

#### § 502.30 Statement of interest.

The Commission in its discretion, may call upon any practitioner for a full statement of the nature and extent of his interest in the subject matter presented by him before the Commission. Attorneys retained on a contingent fee basis shall file with the Commission a copy of the contract of employment. Practitioners subject to section 807 of Merchant Marine Act, 1936, shall comply fully with the requirements of the Federal Maritime Board's General Order 9 (2 F.R. 1240).

#### § 502.31 Former employees.

(a) *Practice prohibited.* No person shall practice, appear, or represent anyone before the Commission in any matter to which he, as member, officer, or employee of the Commission, or as officer or employee of the United States, gave personal consideration or as to the facts of which he gained knowledge during and by reason of his Government service.

(b) *Further prohibitions with exceptions.* No former member of the Federal Maritime Commission shall practice, appear, or represent anyone before the Commission, or act as the employee of an attorney or agent, in any matter which was pending before the Commission during the period of his membership on the Commission. No former officer or employee of the Commission shall practice, appear, or represent anyone before the

Commission, or act as the employee of an attorney or agent, within 2 years after the termination of his service with the Commission, in any matter which was pending before the Commission during the period of his employment by the Commission, unless he shall first obtain the written consent of the Commission. This consent will not be granted unless it appears that the applicant did not, as officer or employee of the United States, give personal consideration to the matter, to handle which consent is sought, or gain knowledge of the facts of said matter during and by reason of his Government service.

(c) *Former employees; affidavit.* Such applicant shall be required to file an affidavit to the effect that he gave no personal consideration to such matter; that he gained no knowledge of the facts involved in such matter during and by reason of his Government service; that he is not associated with, and will not in such matter be associated with, any former member, officer, or employee of the Commission who has gained knowledge of the matter during and by reason of his Government service; and that his employment is not prohibited by any law of the United States or by the regulations of the Commission. The statements contained in such affidavit shall not be sufficient if disproved by an examination of the files and records of the case.

(d) *Former employees; applications for consent.* Applications for consent should be directed to the Commission; should state the former connection with the Commission of the applicant, and should identify the matter in which the applicant desires to appear. The applicant shall be promptly advised as to his privilege to appear in the particular matter, and the application, affidavit, and consent, or refusal to consent, shall be filed by the Commission in its records relative thereto. Separate consents to appear must be obtained to appear in separate cases.

(e) *Assistance to or by former employees.* No one entitled to practice before the Commission shall knowingly (1) assist a person employed by a client to represent him before the Commission in connection with any matter to which such person as a member, officer, or employee of the Commission or as an officer or employee of the United States, gave personal consideration or as to the facts of which such person gained personal knowledge during and by reason of

his Government service, or (2) accept assistance from any such person in connection with any such matter, or (3) share fees with any such person in connection with such matter.

### Subpart C—Parties

#### § 502.41 Parties; how designated.

The term “party,” whenever used in the rules, in this part, shall include any natural person, corporation, association, firm, partnership, trustee, receiver, agency, public or private organization, or governmental agency. A party who seeks relief or other affirmative action under §§ 502.62 and/or 502.68 shall be designated as “complainant.” A party against whom relief or other affirmative action is sought in any proceeding commenced under §§ 502.62, 502.67, or 502.68 shall be designated as “respondent.” A party who petitions to intervene under § 502.74 shall be designated as “intervener.” A party who files a petition under § 502.51, 502.69, or 502.70, or a petition seeking relief not otherwise designated herein shall be designated as “petitioner.” No person other than a party as designated in this section may introduce evidence or examine witnesses at hearings.

#### § 502.42 Hearing Counsel.

The Director, Bureau of Hearing Counsel, shall be a party to all proceedings governed by the rules in this part, except that in complaint proceedings under § 502.62 he may become a party only upon leave to intervene granted pursuant to § 502.73. The Director or his representative shall be designated as “Hearing Counsel” and shall be served with copies of all papers, pleadings, and documents in every proceeding governed by the rules in this part, whether a party of record or not. Hearing Counsel shall actively participate in any proceeding to which he is a party, to the extent required in the public interest, subject to the separation of functions required by section 5(c) of the Administrative Procedure Act. (See § 502.225.)

#### § 502.43 Substitution of parties.

Upon petition and for good cause shown, the Commission may order a substitution of parties except that in case of death of a party substitution may be ordered upon suggestion and without the filing of a petition.

### Subpart D—Rulemaking

#### § 502.51 Petition for issuance, amendment, or repeal of rule.

Any interested party may file with the Commission a petition for the issuance, amendment, or repeal of a rule designed to implement, interpret, or prescribe law, policy, organization, procedure, or practice requirements of the Commission. The petition shall set forth the interest of petitioner and the nature of the relief desired, shall include any facts, views, arguments, and data deemed relevant by petitioner, and shall be verified. If such petition is for the amendment or repeal of a rule, it shall be accompanied by proof of service on all persons, if any, specifically named in such rule, and shall conform in other aspects to Subpart H in this part. Replies to such petition shall conform to the requirements of § 502.75.

#### § 502.52 Notice of proposed rulemaking.

General notice of proposed rulemaking, including the information specified in § 502.143, shall be published in the *FEDERAL REGISTER*, unless all persons subject thereto are named and either are personally served or otherwise have actual notice thereof in accordance with law. Except where notice of hearing is required by statute, this section shall not apply to interpretative rules, general statements of policy, organization rules, procedure, or practice of the Commission, or any situation in which the Commission for good cause finds (and incorporates such finding in such rule) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

#### § 502.53 Participation in rulemaking.

Interested persons will be afforded an opportunity to participate in rulemaking through submission of written data, views, or arguments, with or without opportunity to present the same orally in any manner: *Provided*, That, where the proposed rules are such as are required by statute to be made on the record after opportunity for a hearing, such hearing shall be conducted pursuant to section 7 of the Administrative Procedure Act, and the procedure shall be the same as stated in Subpart J in this part. In those proceedings in which respondents are named, interested persons who wish to participate therein shall file a petition to intervene in accordance with the provisions of § 502.73.

**§ 502.54 Contents of rules.**

The Commission will incorporate in any rules adopted a concise general statement of their basis and purpose.

**§ 502.55 Effective date of rules.**

The publication or service of any substantive rule shall be made not less than 30 days prior to its effective date except (a) as otherwise provided by the Commission for good cause found and published in the FEDERAL REGISTER or (b) in the case of rules granting or recognizing exemption or relieving restriction, interpretative rules, and statement of policy.

**Subpart E—Proceedings; Pleadings; Motions; Replies****§ 502.61 Proceedings.**

Proceedings are commenced by filing with the Commission a complaint or application for other relief, by order to show cause, by order of investigation upon protest against rates, agreements, etc., or by order of the Commission upon petition or upon its own motion.

**§ 502.62 Complaints.**

Relief or other affirmative action sought under the Shipping Act, 1916, Merchant Marine Act, 1936, and related acts shall be set forth in a complaint filed with the Commission. The complaint shall contain the name and address of each complainant, the name and address of complainant's attorney or agent, the name and address of each carrier or person against whom complaint is made, a concise statement of the cause of action, and a request for the relief or other affirmative action sought. Where reparation is sought and the nature of the proceeding so requires, the complaint shall set forth the ports of origin and destination of the shipments, consignees, or real parties in interest where shipments are on "order" bill of lading, consignors, date of receipt by carrier or tender of delivery to carrier, names of vessels, bill of lading number (other identifying reference), description of commodities, weights, measurement, rates, charges made or collected, when, where, by whom and to whom rates and charges were paid, by whom the rates and charges were borne, the amount of damage, and the relief sought. Except under unusual circumstances and for good cause shown, reparation will not be awarded upon a complaint in

which it is not specifically asked for, nor upon a new complaint by or for the same complainant which is based upon a finding in the original proceeding. Wherever a rate, fare, charge, rule, regulation, classification, or practice is involved, appropriate reference to the tariff should be made, if possible. If complaint fails to indicate the sections of the acts alleged to have been violated or clearly to state facts which support the allegations, the Commission may, on its own initiative, require the complaint to be amended to supply such further particulars as it deems necessary. The complaint shall be signed and sworn to by complainant, or by an officer or duly accredited representative of complainant if it is an association or a corporation, or by an authorized agent or attorney. When a complaint is filed by several complainants, one may sign on behalf of all. When the complaint is signed and sworn to by an agent or attorney, it shall be accompanied by a copy of the power of attorney or other authority of such agent or attorney to prosecute the complaint. A form of complaint is set forth in Appendix II (1). The complaint should designate the place at which hearing is desired.

**§ 502.63 Reparation, statute of limitations.**

Complaints seeking reparation shall be filed within two (2) years after the cause of action accrues (sec. 22, Shipping Act, 1916). The Commission will consider as in substantial compliance with the statute of limitations a complaint in which complainant alleges that the matters complained of, if continued in the future, will constitute violations of the shipping acts in the particulars and to the extent indicated and prays for reparation accordingly on all shipments affected thereby which may move during the pendency of the proceeding and on which the transportation charges shall be paid and borne by complainant. Notification to the Commission that a complaint may or will be filed for the recovery of reparation will not constitute a filing within the 2-year period.

**§ 502.64 Joinder of actions and parties.**

Two or more complaints which state similar causes of action against the same respondent or respondents and involve substantially the same issues may be consolidated and heard together. If a

complaint relates to through transportation by continuous carriage or transshipment, all carriers participating in such through transportation shall be joined as respondents. If the complaint relates to more than one carrier or other person subject to the shipping acts, all carriers or other persons against whom a rule or order is sought shall be made respondents. If complaint is made with respect to an agreement filed with the Commission under section 15 of the Shipping Act, 1916, or against a conference organized under said section, the carriers who are parties to such agreement or members of such conference shall be made respondents.

#### § 502.65 Answer to complaint.

Respondent shall file with the Commission an answer to the complaint and shall serve it on complainant within twenty (20) days after the date of service of the complaint by the Commission or within thirty (30) days if such respondent resides in Alaska or beyond Continental United States, unless such periods have been extended under § 502.103 or reduced under § 502.104, or unless motion is filed to withdraw or dismiss the complaint, in which latter case provision for answer, if necessary, will be made by order of the Commission. Such answer shall give notice of issues controverted in fact or law. Recitals of material and relevant facts in a complaint, amended complaint, or bill of particulars, unless specifically denied in the answer thereto, shall constitute evidence, but if request is seasonably made, a competent witness shall be made available for cross-examination on such evidence. The answer shall be signed and verified by respondent, or by an officer or accredited representative of respondent if it is an association or corporation, or by an authorized agent or attorney. Where the answer is made on behalf of several respondents, one may sign on behalf of all. In the event that respondent should fail to file and serve the answer within the time provided, the Commission may enter such rule or order as may be just, or may in any case require such proof as to the matters alleged in the complaint as it may deem proper: *Provided*, That the Commission or Hearing Examiners' Office may permit the filing of a delayed answer after the time for filing the answer has expired, for good cause shown; or if motion to dismiss has been filed.

#### § 502.66 Replies to answers not permitted.

Replies to answers will not be permitted. New matters set forth in respondent's answer will be deemed to be controverted.

#### § 502.67 Order to show cause.

The Commission may institute a proceeding against a person subject to its jurisdiction by order to show cause. The order shall be served upon all persons named therein, shall include the information specified in § 502.143, may require the person named therein to answer, and shall require such person to appear at a specified time and place and present evidence upon the matters specified.

#### § 502.68 Proceedings under section 3 of the Intercoastal Shipping Act, 1933.

(a) Protests against proposed changes in tariffs, invoking the provisions of section 3 of the Intercoastal Shipping Act, 1933, may be made by letter, telegram, or radiogram, and shall be filed with the Director, Bureau of Domestic Regulations, not later than thirteen (13) days prior to the proposed effective date of the change unless the Commission permits the filing of the change in less than thirteen (13) days prior to the proposed effective date thereof, pursuant to the provisions of section 2 of the Intercoastal Act. Every protest shall clearly identify the tariff in question, give specific reference to the items opposed, set forth the grounds for opposition to the change, including a reference to the section or sections of the Shipping Act alleged to have been violated, shall be subscribed and verified, and shall be served upon each carrier whose tariff is protested or upon the issuing agent. Protests sent by telegraph or radio shall be confirmed promptly by letter signed by the person making the protest or by someone in his behalf. Replies thereto shall conform to the requirements of these rules.

(b) When a proposed tariff change is filed with a posting date pursuant to paragraph (f) of § 531.4 of this chapter, protests against said change, invoking the provisions of section 3 of the Intercoastal Shipping Act, 1933, may be filed not later than twenty-five (25) days prior to the proposed effective date thereof, and replies thereto may be filed not later than fifteen (15) days prior to the proposed effective date. The provisions of

this section relating to the form, place, and manner of filing protests, and replies to protests, shall be applicable to protests and replies pursuant to this section. [Amdt. 1, 29 F.R. 10469, July 28, 1964]

#### § 502.69 Declaratory orders.

The Commission may issue a declaratory order to terminate a controversy or to remove uncertainty. Petitions for the issuance thereof shall state clearly and concisely the controversy or uncertainty, shall cite the statutory authority involved, shall include a complete statement of the facts and grounds prompting the petition, together with full disclosure of petitioner's interest, and shall conform to the requirements of Subpart H in this part. Replies thereto shall conform to the requirements of § 502.75.

#### § 502.70 Petitions—general.

All claims for relief or other affirmative action by the Commission, except as otherwise provided herein, shall be by written petition subscribed and verified, which shall state clearly and concisely the petitioner's grounds of interest in the subject matter, the facts relied upon and the relief sought, shall cite by appropriate reference the statutory provision or other authority relied upon for relief, shall be served upon all parties named therein, and shall conform otherwise to the requirements of Subpart H in this part. Replies thereto shall conform to the requirements of § 502.75.

#### § 502.71 Amendments or supplements to pleadings.

Amendments or supplements to any pleading will be allowed or refused in the discretion of the Commission if the case has not been assigned for hearing, otherwise in the discretion of the officer designated to conduct the hearing: *Provided*, That after a case is assigned for hearing no amendment shall be allowed which would broaden the issues, without opportunity to reply to such amended pleading and to prepare for the broadened issues. The presiding officer may direct a party to state his case more fully and in more detail by way of amendment. If a response to an amended pleading is necessary, it may be filed and served in conformity with the requirements of § 502.75 unless the Commission or the presiding officer directs otherwise. Amendments or sup-

plements allowed prior to hearing will be served in the same manner as the original pleading. Whenever by the rules in this part a pleading is required to be verified, the amendment or supplement shall also be verified.

#### § 502.72 Bill of particulars.

Within ten (10) days after date of service of the complaint, respondent may file with the Commission for service upon complainant a request for a bill of particulars. Within ten (10) days after date of service of such request, complainant shall file with the Commission and serve upon respondent either (a) the bill of particulars requested or (b) a reply to such request, made in conformity with the requirements of § 502.75, setting forth the particular matters contained in the request which are objected to and the reasons for the objections. The time for filing answer to the complaint shall be extended to a date ten (10) days after the date of service of the bill of particulars or of notice of the Commission's disallowance of the request therefor. The time limits prescribed above are subject to § 501.104. For good cause shown, request for a bill of particulars also may be filed after answer is made and within a reasonable time prior to hearing.

#### § 502.73 Petition for intervention.

A petition for leave to intervene may be filed in any proceeding before the Commission. The petition will be granted if the proposed intervenor shows in his petition a substantial interest in the proceeding and the grounds for intervention are pertinent to the issues already presented and do not unduly broaden them, but if filed after hearing has been closed it will not be granted ordinarily. If a petition filed prior to the hearing is granted, copies will be served by the Commission as provided by § 502.113. When tendered at the hearing, sufficient copies shall be provided for distribution as motion papers to the parties represented at the hearing, together with additional copies for the use of the Commission. When the petition is filed subsequent to the hearing, service shall be made on all parties to the proceeding as provided by § 502.114, and reply may be made thereto in conformity with § 502.75. The petition shall set forth the grounds of the proposed intervention and the interest and

position of the petitioner in the proceeding, shall comply with the other applicable provisions of Subpart H in this part, and if affirmative relief is sought, the applicable provisions of § 502.62. A person granted permission to intervene becomes a party, pursuant to Subpart C in this part, and may introduce evidence or examine witnesses at any hearing which may be held in the proceeding.

#### § 502.74 Motions.

All motions and requests for rulings by the Commission or the presiding officer shall state clearly and concisely the purpose of and the relief sought by the motion, the statutory or principal authority relied upon, and the facts claimed to constitute the grounds requiring the relief requested. If made before or after the hearing, such motion shall be in writing and shall conform to the requirements of Subpart H in this part. If made at the hearing, such motion may be stated orally and shall be made a part of the transcript: *Provided*, That the presiding officer may require that such motion be reduced to writing and filed and served in the same manner as written motions. Replies to written motions shall comply with the requirements of § 502.75. Motions and replies thereto shall be addressed to the presiding officer if the case is pending before such officer: *Provided*, That motions to dismiss or otherwise terminate the proceeding, and replies thereto, shall be addressed to the Commission. Oral argument upon a written motion will be granted within the discretion of the Commission or the presiding officer, as the case may be.

#### § 502.75 Replies to pleadings, motions, applications, etc.

(a) A reply to a reply is not permitted. Except as otherwise provided respecting answers (§ 502.65), shortened procedure (Subpart K in this part), briefs (§ 502.221), exceptions (§ 502.229), and the documents specified in paragraph (b) in this section, an adverse party may file a reply to any written motion, pleading, application, etc., permitted under the rules in this part within ten (10) days after date of service thereof, unless a shorter period is fixed under § 502.104.

(b) When time permits, replies also may be filed to protests seeking suspension of tariffs (§ 502.68), applications for subpoenas duces tecum (§ 502.131), applications for enlargement of time and

postponement of hearing (Subpart G in this part), in motions to take depositions (§ 502.201).

(c) Replies shall be in writing, shall be verified if verification of original pleading is required, shall be so drawn as fully and completely to advise the parties and the Commission as to the nature of the defense, shall admit or deny specifically and in detail each material allegation of the pleading answered, shall state clearly and concisely the facts and matters of law relied upon, and shall conform to the requirements of Subpart H in this part.

#### Subpart F—Settlement; Prehearing Procedure

##### § 502.91 Opportunity for informal settlement.

Where time, the nature of the proceeding, and the public interest permit, all interested parties shall have the opportunity for the submission and consideration of facts, argument, offers of settlement, or proposal of adjustment, without prejudice to the rights of the parties; no stipulation, offer, or proposal shall be admissible in evidence over the objection of any party in any hearing on the matter. When any settlement does not dispose of the whole proceeding, the remaining issues shall be determined in accordance with sections 7 and 8 of the Administrative Procedure Act.

##### § 502.92 Voluntary payment of reparation.

Carriers or other persons subject to the shipping acts may file applications for the voluntary payment of reparation or for permission to waive collection of undercharges, even though no complaint has been filed pursuant to § 502.62. All such applications shall be made in accordance with the form prescribed in Appendix II (5) of the rules in this part, shall describe in detail the transaction out of which the claim for reparation arose, and shall be filed within the 2-year statutory period referred to in § 502.63. Such applications will be considered the equivalent of a complaint and answer thereto admitting the facts complained of. If allowed, an order for payment will be issued by the Commission.

##### § 502.93 Satisfaction of complaint.

If a respondent satisfies a complaint either before its answer thereto is due or after answering, a statement to that

effect, setting forth when and how the complaint has been satisfied and signed and verified by the opposing parties, shall be filed with the Commission and served upon all parties of record. Such a statement may be by letter. Satisfied complaints will be dismissed in the discretion of the Commission.

#### § 502.94 Prehearing conference.

(a) (1) Prior to any hearing the Commission or presiding officer may direct all interested parties, by written notice, to attend one or more prehearing conferences for the purpose of considering any settlement under § 502.91, formulating the issues in the proceeding and determining other matters to aid in its disposition. In addition to any offers of settlement or proposals of adjustment, there may be considered the following:

- (i) Simplification of the issues;
- (ii) The necessity or desirability of amendments to the pleadings;
- (iii) The possibility of obtaining admission of fact and of documents which will avoid unnecessary proof;
- (iv) Limitation on the number of witnesses;
- (v) The procedure at the hearing;
- (vi) The distribution to the parties prior to the hearing of written testimony and exhibits;
- (vii) Consolidation of the examination of witnesses by counsel;
- (viii) Time and place of hearing; and
- (ix) Such other matters as may aid in the disposition of the proceeding.

(2) The officer conducting the conference may require, prior to the hearing, exchange of exhibits and any other material which may expedite the hearing. He shall assume the responsibility of accomplishing the purposes of the notice of prehearing conference so far as this may be possible without prejudice to the rights of any party.

(3) The notice of hearing will recite the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties concerning any of the matters considered. This notice, when entered, will limit the issues to be heard at the hearing to those not disposed of by admissions or agreements of counsel, and will control the subsequent course of the proceeding unless modified at the hearing to prevent manifest injustice.

(b) In any proceeding under these rules, the presiding officer may, in his discretion, call the parties together for a

conference prior to the taking of testimony, or may recess the hearing for such a conference, with a view to carrying out the purpose of this rule. The presiding officer shall state on the record the results of such conference.

#### Subpart G—Time

##### § 502.101 Computation.

In computing any period of time under the rules in this part, except § 502.63, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or national legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or such holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and holidays shall be excluded from the computation.

##### § 502.102 Additional time to file documents.

Parties in the States of Washington, Oregon, and California, parties in Alaska, and parties who reside beyond continental United States, and their agents or attorneys, are allowed five (5) additional days for filing documents. This rule, however, shall not apply where a limitation of time is fixed by statute, or by notice enlarging time under § 502.103 or reducing time under § 502.104, or by §§ 502.163, 502.222, 502.230, and 502.264.

##### § 502.103 Enlargement of time to file documents.

Applications for enlargement of time for the filing of any pleading or other document shall set forth the reasons for the application. Such applications may be granted upon a showing of diligence and good cause on the part of applicant, except where the time for compliance has been fixed by statute. Such applications shall conform to the requirements of Subpart H in this part, except as to service if they show that the parties have received actual notice of the application; and in relation to briefs, exceptions, and replies to exceptions—such applications shall conform to the further provisions of §§ 502.222 and 502.230. Upon motion made after the expiration of the specified period, the filing may be permitted to be done where reasonable grounds are found for the failure to file. Replies to such applications shall conform to the requirements of § 502.75.

**§ 502.104 Reduction of time to file documents.**

Except as otherwise provided by law and for good cause, the Commission, with respect to matters pending before it, and the presiding officer, with respect to matters pending before him, may reduce any time limit prescribed in the rules in this part.

**§ 502.105 Postponement of hearing.**

Applications for postponement of any hearing date shall set forth the reasons for the application, and shall conform to the requirements of Subpart H in this part, except as to service if they show that parties have received actual notice of the application. Such applications may be granted upon a showing of diligence and good cause on the part of the applicant. Replies to such applications shall conform to the requirements of § 502.75.

**Subpart H—Form, Execution, and Service of Documents**

**§ 502.111 Form and appearance of documents filed with Commission.**

All papers to be filed under the rules in this part may be reproduced by printing or by any other process, provided the copies are clear and legible; shall be dated (the original), signed in ink, show the docket description and title of the proceeding, and show the title, if any, and address of the signer. If typewritten, the impression shall be on only one side of the paper and shall be double spaced, except that quotations shall be single spaced and indented. Documents not printed, except correspondence and exhibits, should be on strong, durable paper and shall be not more than 8½ inches wide and 12 inches long, with a left hand margin 1½ inches wide. Printed documents shall be printed in clear type (never smaller than small pica or 11-point type) adequately leaded, and the paper shall be opaque and unglazed. Documents of more than twenty (20) typewritten pages, except exhibits, shall be printed unless permission is secured to reproduce them by other methods. Briefs, if printed, shall be printed on paper 6½ inches wide and 9¼ inches long, with inside margin not less than 1 inch wide, and shall contain a subject index with page references and a list of authorities cited.

**§ 502.112 Subscription and verification of documents.**

(a) Pleadings and other documents filed, except complaints and petitions for intervention subject to § 502.62 or 502.73, respectively, shall be subscribed: (1) By the person or persons filing same, (2) by an officer thereof if it be a corporation or association, (3) by an officer or employee if it be a government instrumentality, or (4) by an attorney or other person having authority with respect thereto.

(b) Verification shall be made under oath of any facts alleged in the document filed, by the person filing, an officer, or an attorney or other person having authority with respect thereto. The form of verification set forth in Appendix II (1), suitably modified, should be used.

**§ 502.113 Service by the Commission.**

Complaints filed pursuant to § 502.62, amendments to complaints, petitions to intervene granted prior to hearing, requests for bills of particulars, and complainant's memoranda filed in shortened procedure cases will be served by the Commission. In addition to and accompanying the original of every document filed with the Commission for service by the Commission, there shall be a sufficient number of copies for use of the Commission (see § 502.117) and for service on each party to the proceeding.

**§ 502.114 Service by parties.**

Answers, briefs, exceptions, written motions, applications, requests for depositions, petitions, replies, requests for findings by Hearing Counsel, stipulations, protests, bills of particulars, and all other papers in proceedings for the Commission under the rules in this part, except pleadings served by the Commission under § 502.113, shall, when tendered to the Commission or to the presiding officer for filing show that service has been made upon all parties to the proceeding. Such service shall be made by delivering one copy to each party in person or by mailing by first-class mail properly addressed with postage prepaid. When a party has appeared by attorney or other representative, service upon such attorney or other representative will be deemed service upon the party. All documents served by mail shall be mailed in sufficient time to reach the

parties on the date on which the original is due to be filed with the Commission.

**§ 502.115 Date of service.**

The date of service of documents served by the Commission shall be the date shown in the service stamp thereon. The date of service of documents served by parties shall be the day when the matter served is deposited in the United States mail, or is delivered in person, as the case may be. In computing the time from such dates, the provisions of § 502.-101 shall apply.

**§ 502.116 Certificate of service.**

The original of every document filed with the Commission and required to be served upon all parties to a proceeding shall be accompanied by a certificate of service signed by the party making service, stating that such service has been made upon each party to the proceeding. Certificates of service may be in substantially the following form:

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing via first-class mail, postage prepaid (or by delivering in person), a copy to each such party in sufficient time to reach such party on the date said document is due to be filed with the Commission.

Dated at ----- this ----- day of ----- 19-----  
(Signature) -----  
For -----

**§ 502.117 Copies of Documents for use of the Commission.**

Except as otherwise provided in the rules in this part, the original and fifteen (15) copies of every document filed and served in proceedings before the Commission, except exhibits made a part of the record, shall be furnished for the Commission's use.

**Subpart I—Subpenas**

**§ 502.131 Applications; issuance.**

Subpenas to require attendance of witnesses and subpenas duces tecum will be issued to parties upon request and reasonable showing, by the presiding officer before or at the hearing. Applications for subpenas duces tecum shall be in writing, shall set forth the relevancy and materiality of the facts which the applicant expects to prove, shall describe in detail and with reasonable certainty the books, papers, documents, or other records to be produced, and shall conform to the requirements of Subpart H

in this part. Replies to such application shall conform to the requirements of § 502.75.

**§ 502.132 Attendance and mileage fees.**

Persons attending hearings under requirement of subpenas are entitled to the same fees and mileage as in the courts of the United States, to be paid by the party at whose instance the persons are called.

**§ 502.133 Service of subpenas.**

If service of subpena is made by a United States marshal or his deputy, such service shall be evidenced by his return thereon. If made by any other person, such person shall make affidavit thereto, describing the manner in which service is made, and return such affidavit on or with the original subpena. In case of failure to make service, the reasons for the failure shall be stated on the original subpena. In making service the original subpena shall be exhibited to the person served, shall be read to him if he is unable to read, and a copy thereof shall be left with him. The original subpena, bearing or accompanied by required return, affidavit, or statement, shall be returned without delay to the Commission, or if so directed on the subpena, to the presiding officer before whom the person named in the subpena is required to appear.

**Subpart J—Hearings; Presiding Officers; Evidence**

**§ 502.141 Hearings not required by statute.**

The Commission may call informal public hearings, not required by statute, to be conducted under the rules in this part where applicable, for the purpose of rulemaking or to obtain information necessary or helpful in the determination of its policies or the carrying out of its duties, and may require the attendance of witnesses and the production of evidence.

**§ 502.142 Hearings required by statute.**

In complaint and answer cases, investigations on the Commission's own motion, and in other rulemaking and adjudication proceedings in which a hearing is required by statute, formal hearings shall be conducted pursuant to section 7 of the Administrative Procedure Act. Proceedings involving common questions of law and fact may be consolidated for hearing.

**§ 502.143 Notice of nature of hearing, jurisdiction, and issues.**

Persons entitled to notice of hearings, except those notified by complaint served under § 502.113, will be duly and timely informed of (a) the nature of the proceeding, (b) the legal authority and jurisdiction under which the proceeding is conducted, and (c) the terms, substance, and issues involved, or the matters of fact and law asserted, as the case may be. Such notice shall be published in the FEDERAL REGISTER unless all persons subject thereto are named and either are personally served or otherwise have actual notice thereof in accordance with law.

**§ 502.144 Notice of time and place of hearing.**

Notice of hearing will designate the time and place thereof and the person or persons who will preside. The date or place of a hearing for which notice has been issued may be changed when warranted. Reasonable notice will be given to the parties or their representatives of the time and place or the change thereof, due regard being had for the public interest and the convenience and necessity of the parties or their representatives. Notice may be served by mail or telegraph.

**§ 502.145 Presiding officer.**

The examiners of the Commission's Hearing Examiners' Office will be designated to preside at hearings required by statute, in rotation so far as practicable, unless the Commission or one or more members thereof shall preside; and also at hearings not required by statute when designated to do so by the Commission.

**§ 502.146 Commencement of functions of Hearing Examiners' Office.**

In proceedings handled by the Hearing Examiners' Office, its functions shall attach upon (a) the filing of a formal complaint, or (b) upon the institution of a proceeding and ordering of hearing by the Commission.

**§ 502.147 Authority of presiding officer.**

The officer designated to hear a case shall have authority to arrange and give notice of hearings; sign and issue subpoenas authorized by law; take or cause depositions to be taken; rule upon proposed amendments or supplements to

pleadings; hold conferences for the settlement or simplification of issues by consent of the parties; regulate the course of the hearing; prescribe the order in which evidence shall be presented; dispose of procedural requests or similar matters; hear and rule upon motions, other than motions to dismiss, which may be granted only by the Commission; administer oaths and affirmations; examine witnesses; direct witnesses to testify or produce evidence available to them which will aid in the determination of any question of fact in issue; rule upon offers of proof and receive relevant, material, reliable and probative evidence; act upon petitions to intervene; permit submission of facts, argument, offers of settlement, and proposals of adjustment; hear oral argument at the close of testimony; fix the time for filing briefs, motions, and other documents to be filed in connection with hearings and the examiner's decision thereon, except as otherwise provided by the rules in this part; act upon petitions for enlargement of time to file such documents including answers to formal complaints and exceptions to examiner's decisions and replies thereto; and dispose of any other matter that normally and properly arises in the course of proceedings. Disrespectful, disorderly, or contumacious language or conduct at any hearing shall be grounds for exclusion of the person guilty thereof from such hearing and for summary suspension for the duration of the hearing by the Commission or the presiding officer.

**§ 502.148 Postponement or change of place by presiding officer.**

If, in the judgment of the presiding officer, convenience or necessity so requires, he may postpone the time or change the place of hearing.

**§ 502.149 Disqualification of presiding or participating officer.**

Any presiding or participating officer may at any time withdraw if he deems himself disqualified, in which case there will be designated another presiding or participating officer. If a party to a proceeding, or his representative, files in good faith a timely and sufficient affidavit of personal bias or disqualification of a presiding or participating officer, the Commission will determine the matter as a part of the record and decision in the case.

**§ 502.150 Further evidence required by presiding officer during hearing.**

At any time during the hearing the presiding officer may call for further evidence upon any issue, and require such evidence where available to be presented by the party or parties concerned, either at the hearing or adjournment thereof. If a witness refuses to testify or produce the evidence as requested, the presiding officer shall report such refusal to the Commission forthwith.

**§ 502.151 Exceptions to rulings of presiding officer unnecessary.**

Formal exceptions to rulings of the presiding officer are unnecessary. It is sufficient that a party, at the time the ruling of the presiding officer is made or sought, makes known the action which he desires the presiding officer to take or his objection to an action taken, and his grounds therefor.

**§ 502.152 Offer of proof.**

An offer of proof made in connection with an objection taken to any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

**§ 502.153 Appeal from ruling of presiding officer.**

Rulings of presiding officers may not be appealed prior to, or during the course of, the hearing except in extraordinary circumstances where prompt decision by the Commission is necessary to prevent unusual delay, expense, or detriment to the public interest, in which instances the matter shall be referred forthwith by the presiding officer to the Commission for determination.

**§ 502.154 Rights of parties as to presentation of evidence.**

Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The presiding officer shall, however, have the right and duty to limit the introduction

of evidence and the examination and cross-examination of witnesses when in his judgment such evidence or examination is cumulative or is productive of undue delay in the conduct of the hearing.

**§ 502.155 Burden of proof.**

At any hearing in a suspension proceeding under section 3 of the Intercoastal Shipping Act, 1933 (§ 502.68), the burden of proof to show that the suspended rate, fare, charge, classification, regulation, or practice is just and reasonable shall be upon the respondent carrier or carriers. In all other cases, the burden shall be on the proponent of the rule or order.

**§ 502.156 Evidence admissible.**

In any proceeding under the rules in this part, all evidence which is relevant, material, reliable and probative, and not unduly repetitious or cumulative shall be admissible. Irrelevant and immaterial or unduly repetitious or cumulative evidence shall be excluded.

**§ 502.157 Written evidence.**

(a) The use of written statements in lieu of oral testimony shall be resorted to where the Examiner in his discretion rules that such procedure is appropriate. The statements shall be numbered in paragraphs, and each party in his rebuttal shall be required to list the paragraphs to which he does not object, those to which he does not object apart from argumentative or procedural matter, and those to which he objects, giving an indication of his reasons for objecting. Statistical exhibits shall contain a short commentary explaining the conclusions which the offeror draws from the data. Any portion of such testimony which is argumentative shall be excluded. Where written statements are used, copies of the statement and any rebuttal statement shall be furnished to all parties, as shall copies of exhibits. The Examiner shall fix respective dates for the exchange of such written statements and exhibits and of such written rebuttal statements and exhibits in advance of the hearing to enable study by the parties of such testimony. Thereafter the parties shall endeavor to stipulate as many of the facts set forth in the written testimony as they may be able to agree upon. Oral examination of witnesses shall thereafter be confined to facts which remain in controversy, and

a reading of the written statements at the hearing will be dispensed with unless the presiding officer otherwise directs.

(b) Where a formal hearing is held in a rulemaking proceeding, interested persons will be afforded an opportunity to participate through submission of relevant, material, reliable and probative written evidence properly verified: *Provided*, That such evidence submitted by persons not present at the hearing will not be made a part of the record if objected to by any party on the ground that the person who submits the evidence is not present for cross-examination.

**§ 502.158 Documents containing matter not material.**

Where written matter offered in evidence is embraced in a document containing other matter which is not intended to be offered in evidence, the party offering shall present the original document to all parties at the hearing for their inspection, and shall offer a true copy of the matter which is to be introduced unless the presiding officer determines that the matter is short enough to be read into the record. Opposing parties shall be afforded an opportunity to introduce in evidence, in like manner, other portions of the original document which are material and relevant.

**§ 502.159 Copies of exhibits.**

One copy of each exhibit shall be furnished to each of the parties present at the hearing and to the presiding officer unless he directs otherwise.

**§ 502.160 Records in other proceedings.**

When any portion of the record before the Commission in any proceeding other than the one being heard is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit unless the parties represented at the hearing stipulate upon the record that such portion may be incorporated by reference.

**§ 502.161 Commission's files.**

Where any matter contained in a tariff, report, or other document on file with the Commission is offered in evidence, such document need not be produced or marked for identification, but the matter so offered shall be specified in its particularity, giving tariff number and page number of tariff, report, or document in

such manner as to be readily identified, and may be received in evidence by reference, subject to comparison with the original document on file.

**§ 502.162 Stipulations.**

The parties may, by stipulation in writing filed at the prehearing conference or by written or oral stipulation presented at the hearing or by written stipulation subsequent to the hearing, agree upon any facts involved in the proceeding and include them in the record with the consent of the presiding officer. It is desirable that facts be thus agreed upon whenever practicable. Written stipulations shall be subscribed and served upon all parties of record.

**§ 502.163 Receipt of documents after hearing.**

Documents or other writings to be submitted for the record after the close of the hearing will not be received in evidence except upon agreement of all parties and with the permission of the presiding officer. Such documents or other writings when submitted shall be accompanied by proof that copies have been served upon all parties, and shall be received not later than ten (10) days after the close of the hearing except for good cause shown, and not less than ten (10) days prior to the date set for filing briefs. Exhibit numbers will not be assigned until such documents are actually received and incorporated in the record. In computing the time within which to file such documents or other writings, the 5 additional days provided in § 502.102 shall not apply. Documents or other writings submitted contrary to the provisions of this rule will be returned to the sender.

**§ 502.164 Oral argument at hearings.**

A request for oral argument at the close of testimony will be granted or denied by the presiding officer in his discretion.

**§ 502.165 Official transcript.**

The Commission will designate the official reporter for all hearings. The official transcript of testimony taken, together with any exhibits and any briefs or memoranda of law filed therewith, shall be filed with the Commission. Transcripts of testimony will be available in any proceeding under the rules in this part, and will be supplied by the official reporter to the parties and to the

public, except when required for good cause to be held confidential, at rates not to exceed the maximum rates fixed by contract between the Commission and the reporter.

#### § 502.166 Corrections of transcript.

Motions made at the hearing to correct the record will be acted upon by the presiding officer. Motions made after the hearing to correct the record shall be filed with the presiding officer within ten (10) days after receipt of the transcript, unless otherwise directed by the presiding officer, and shall be served on all parties. Such motions may be in the form of a letter and shall certify the date when the transcript was received. If no objections are received within ten (10) days after date of service, the transcript will, upon approval of the presiding officer, be changed to reflect such corrections. If objections are received, the motion will be acted upon with due consideration of the stenographic record of the hearing.

#### § 502.167 Objection to public disclosure of information.

Upon objection to public disclosure of any information sought to be elicited during a hearing, the witness shall disclose such information only in the presence of the presiding officer, official reporter, and such attorneys or representatives of each party as the presiding officer shall designate, and after all present have been sworn to secrecy. The transcript of testimony shall be held confidential. Within five (5) days after such testimony is given, the objecting party shall file with the presiding officer a verified written motion to withhold such information from public disclosure, setting forth sufficient identification of same and the basis upon which public disclosure should not be made. Copies of said transcript and motion need not be served upon any other party unless so ordered by the presiding officer.

#### § 502.168 Copies of data or evidence.

Every person compelled to submit data or evidence shall be entitled to retain or, on payment of proper costs, procure a copy of transcript thereof.

#### § 502.169 Record for decision.

The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision.

### Subpart K—Shortened Procedure

#### § 502.181 Selection of cases for shortened procedure; consent required.

By consent of the parties and with approval of the Commission by notice, a complaint proceeding may be conducted under shortened procedure without oral hearing: *Providing*, That a hearing may be ordered at the request of any party prior to initial or recommended decision or upon the Commission's motion at any stage of the proceeding.

#### § 502.182 Complainant's memorandum of facts and argument.

Each complainant shall submit to the Commission within twenty-five (25) days after date of service of notice by the Commission, unless a shorter period is fixed under § 502.104, a memorandum of the facts, subscribed and verified according to § 502.112, and of arguments separately stated, upon which it relies. The original of each memorandum shall be accompanied by sufficient copies for service upon each party and for the Commission's use.

#### § 502.183 Respondent's answering memorandum.

Within twenty-five (25) days after date of service of complainant's memorandum, unless a shorter period is fixed under § 502.104, each respondent shall serve upon the complainant an answering memorandum of the facts, subscribed and verified according to § 502.112, and of argument, separately stated, upon which it relies. The original of the answering memorandum shall be accompanied by a certificate of service as provided in Subpart H in this part and shall be accompanied by copies for the Commission's use.

#### § 502.184 Complainant's memorandum in reply.

Within fifteen (15) days after the date of service of the answering memorandum, unless a shorter period is fixed under § 502.104, each complainant may serve a memorandum in reply upon each respondent, subscribed, verified, and served as provided in Subpart H in this part, and shall be accompanied by copies for the Commission's use. This will conclude presentation of the evidence unless otherwise determined by the Commission.

**§ 502.185 Service of memoranda upon and by interveners.**

Service of all memoranda shall be made upon any interveners. Intervenors shall file and serve memoranda in conformity with the provisions relating to the parties on whose behalf they intervene.

**§ 502.186 Contents of memoranda.**

The memorandum should contain concise arguments and fact, the same as would be offered if a formal hearing were held and briefs filed. If reparation is sought, paid freight bills should accompany complainant's original memorandum.

**§ 502.187 Procedure after filing of memoranda.**

An initial, recommended, or tentative decision will be served upon the parties in the same manner as is provided under § 502.226. Thereafter, the procedure will be the same as that in respect to proceedings after formal hearing.

**Subpart I—Depositions and Discovery**

**§ 502.201 Request for orders to take; time of filing; contents.**

The Commission may, either on its own initiative, pursuant to a prehearing conference or otherwise, or upon proper request of a party to a proceeding, issue an order to take a deposition. A motion to take a deposition shall be filed with the Commission not less than fifteen (15) days before the proposed date for taking the deposition, unless a shorter period is fixed under § 502.104, and shall set forth the reason for the deposition, the place and time of taking, the officer before whom it is to be taken, the name and address of each witness to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and whether the deposition is to be based upon written interrogatories or upon oral examination. If the deposition is to be based upon oral examination, the motion shall contain a statement of the matters concerning which each witness will testify. If the deposition is to be based on written interrogatories, the motion shall be accompanied by the interrogatories to be propounded, serially numbered. Copies of all motions to take depositions, and accompanying interrogatories, if any, shall

conform to the requirements of Subpart H in this part. Objection to the taking of such deposition may be made in a reply to such motion, which shall conform to the requirements of § 502.75. Without prejudice to objection to such motion, the reply may also state objection to any individual interrogatory, and if the deposition is permitted, the Commission will rule upon such objections to interrogatories. A party served with an order to take a deposition on written interrogatories shall have ten (10) days after date of service of such order, unless a shorter period is fixed under § 502.104, within which to file and serve written cross-interrogatories, which shall be served pursuant to Subpart H in this part. Upon the issuance of an order by the Commission for the taking of a deposition, the Secretary will mail a copy thereof to all parties, and the party who requested the deposition shall transmit a copy of such order to the officer taking the deposition. An application to take a deposition in a foreign country will be entertained when necessary or convenient, and authority to take such deposition will be granted upon such notice and other terms and directions as are lawful and appropriate.

**§ 502.202 Contents of order.**

The order issued authorizing the taking of a deposition will state the name and address of each witness or a general description sufficient to identify him or the particular class or group to which he belongs, the matters concerning which it is expected such witness will testify, the place where, the time when, and the officer before whom the deposition is to be taken. If the deposition is to be taken upon written interrogatories, a list of the interrogatories will accompany the order.

**§ 502.203 Record of examination; oath; objections.**

The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically, shall be translated to English pursuant to § 502.7 if necessary, and shall be transcribed unless the parties agree otherwise. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking

it, or to the evidence presented, or to the conduct of any party, and any other objections to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. Any party served with a notice to take an oral deposition may cross-examine a witness whose testimony is taken under such deposition. In lieu of cross-examination, parties served with notice of taking a deposition may transmit written interrogatories or cross-interrogatories to the officer taking the deposition, who shall propound them to the witness and record the answers verbatim together with any objections interposed thereto by adverse parties.

**§ 502.204 Submission to witness; changes; signing.**

When the testimony is fully transcribed the deposition of each witness shall be submitted to him for examination and shall be read to or by him. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign, together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless upon objection the presiding officer holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

**§ 502.205 Certification and filing by officer; copies.**

The officer taking the deposition shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness, and that said officer is not of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation. He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)," and shall promptly send the original and

two copies thereof, together with the original and two copies of all exhibits, by registered mail to the Commission. Interested parties shall make their own arrangements with the officer taking the deposition for copies of the testimony and the exhibits.

**§ 502.206 Waiver of objections and admissibility.**

Objections to the form of question and answer shall be made before the officer taking the depositions by parties or representatives present, and if not so made, shall be deemed waived. Depositions shall, when offered at the hearing, be subject to proper legal objection.

**§ 502.207 Time of filing.**

All depositions shall be filed with the Commission not later than the date of the hearing in which they are to be offered as evidence.

**§ 502.208 Inclusion in record.**

No deposition shall constitute a part of the record in any proceeding until received in evidence.

**§ 502.209 Witness fees; expenses of taking depositions.**

Witnesses whose depositions are taken pursuant to the rules in this part, and the officer taking such depositions, shall severally be entitled to the same fees and mileage as are paid for like service in the courts of the United States. All expenses of taking such depositions shall be paid by the party at whose instance the deposition is taken.

**§ 502.210 Depositions taken or authorized by presiding officer.**

The presiding officer may also take or authorize depositions to be taken, and in such event the rules in this part shall govern insofar as applicable unless the proper course of the proceeding requires otherwise, in which case he shall prescribe the procedure to be followed.

**§ 502.211 Discovery and production of documents.**

Upon motion of any party showing good cause therefor and upon notice to all other parties, the Commission or presiding officer may direct any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which

constitute or contain evidence relating to any matter, not privileged, which is relevant to the subject matter involved in the pending proceeding, and which are in his possession, custody or control. The order shall specify the time, place, and manner of making the inspection and taking the copies and photographs and may prescribe such terms and conditions as are just.

**Subpart M—Briefs: Requests for Findings; Decisions; Exceptions**

**§ 502.221 Briefs: request for findings.**

The presiding officer shall fix the time for filing briefs and any enlargement thereof. The period of time allowed, subject to the provisions of § 502.102, shall be the same for all parties unless the presiding officer, for good cause shown, directs otherwise. The parties may not file more than one brief except in unusual cases. Briefs shall be served upon all parties pursuant to Subpart H of this part. In investigations instituted on the Commission's own motions, the presiding officer may require Hearing Counsel to file a request for findings of fact and conclusions within a reasonable time prior to the filing of briefs. Service of the request shall be in accordance with the provisions of Subpart H of this part. In addition to the ordinary summary of evidence, with reference to exhibit numbers and pages of the transcript, and statement of law with appropriate citations of the authorities relied upon, the brief shall contain proposed findings of fact and conclusions in serially numbered paragraphs. Briefs including briefs in support of exceptions and replies thereto (§§ 502.228 and 502.229) shall be limited to a maximum of fifty (50) printed pages, exclusive of the table of contents, table of citations of authorities, appendix, and certificate of service. For good cause shown in writing, filed with the presiding officer prior to the close of hearing, the Commission or the presiding officer may prescribe a maximum length of briefs in excess of fifty (50) pages.

**§ 502.222 Requests for enlargement of time for filing briefs.**

Requests for enlargement of time within which to file briefs shall conform to the requirements of § 502.103. Except for good cause shown, such requests shall be filed and served not later than eight (8) days before the expiration of the

time fixed for the filing of the briefs. In computing the time within which to file such request, the 5 additional days provided in § 502.102 shall not apply.

**§ 502.223 Reopening of case by presiding officer prior to decision.**

At any time prior to the filing of his decision, the presiding officer, either upon petition or within his discretion, may, for good cause and upon reasonable notice, reopen the case for the reception of further evidence.

**§ 502.224 Decisions—authority to make and kinds.**

To the examiners of the Hearing Examiners' Office is delegated the authority to make and serve initial or recommended decisions. The notice of hearing or order of investigation shall prescribe the kind of decision to be issued. The same officers who preside at the reception of evidence pursuant to section 7 of the Administrative Procedure Act shall make the initial or recommended decision except where such officers become unavailable to the Commission, in which case another officer will be designated to make such decision. Where the Commission requires the entire record in the case to be certified to it for initial decision, the presiding or other officer shall first recommend a decision except that in rule making or determining applications for initial licenses (a) in lieu thereof the Commission may issue a tentative decision or any of its responsible officers may recommend a decision or (b) any such procedure may be omitted in any case in which the Commission finds upon the record that due and timely execution of its functions imperatively and unavoidably so requires. When an initial decision becomes a decision of the Commission in the absence of Commission review, the Secretary will issue and serve upon the parties of record notice of the date such decision becomes effective as a Commission decision or order.

**§ 502.225 Separation of functions.**

The separation of functions as required by section 5(c) of the Administrative Procedure Act shall be observed in proceedings under these rules.

**§ 502.226 Decisions—contents and service.**

All initial, recommended, tentative, and final decisions will include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all

the material issues of fact, law, or discretion presented on the record, and the appropriate rule, order, sanction, relief, or denial thereof. A copy of each decision when issued shall be served on the parties to the proceeding, and furnished to interested persons upon request.

**§ 502.227 Decision based on official notice.**

Official notice may be taken of such matters as might be judicially noticed by the courts, or of technical or scientific facts within the general knowledge of the Commission as an expert body: *Provided*, That where a decision or part thereof rests on the official notice of a material fact not appearing in the evidence in the record, the fact of official notice shall be so stated in the decision, and any party, on timely request, shall be afforded an opportunity to show the contrary.

**§ 502.228 Exceptions to, and review by Commission of, decisions.**

Within fifteen (15) days after date of service of the initial, recommended, or tentative decision, unless a shorter period is fixed under § 502.104, any party may file a memorandum excepting to any conclusions, findings, or statements contained in such decision, and a brief in support of such memorandum. Such exceptions and brief shall constitute one document, shall indicate with particularity alleged errors, shall indicate page of the transcript and exhibit number when referring to the record, and shall be served on all parties pursuant to Subpart H in this part. In the absence of ascertained error or exceptions, a recommended or tentative decision will be taken by the Commission as the basis of its decision. Whenever the officer who presided at the reception of the evidence, or other qualified officer, makes an initial decision, and in the absence of the filing of exceptions thereto or notice of review thereof by the Commission, such decision by the officer, without further proceedings, shall become the decision of the Commission. Upon the filing of exceptions to, or review of, an initial decision, such decision shall become inoperative until the Commission determines the matter. Where exceptions are filed to, or the Commission reviews, an initial decision, the Commission, except as it may limit the issues upon notice or by rule, will have all the powers which it would have in making the initial decision.

Whenever the Commission shall determine to review an initial decision on its own initiative, notice of such intention shall be served upon the parties within thirty (30) days after date of service of the initial decision.

**§ 502.229 Replies to exceptions.**

An adverse party may file and serve a reply to exceptions within fifteen (15) days after date of service thereof, unless a shorter period is fixed under § 502.104. Such reply shall indicate page of the transcript and exhibit numbers when referring to the record.

**§ 502.230 Request for enlargement of time for filing exceptions and replies thereto.**

Requests for enlargement of time within which to file exceptions, and briefs in support thereof, or replies to exceptions shall conform to the applicable provisions of § 502.103. Except for good cause shown, such requests shall be filed and served not later than eight (8) days before the expiration of the time fixed for the filing of such documents. In computing the time within which to file such request, the five (5) additional days provided in § 502.102 shall not apply.

**§ 502.231 Certification of record by presiding or other officer.**

The presiding or other officer shall certify and transmit the entire record to the Commission when (a) exceptions are filed or the time therefor has expired, (b) notice is given by the Commission that the initial decision will be reviewed on its own initiative, or (c) the Commission requires the case to be certified to it for initial decision.

**Subpart N—Oral Argument; Submittal for Final Decision**

**§ 502.241 Oral argument.**

If oral argument before the Commission is desired on exceptions to an initial, recommended, or tentative decision, or on a motion, petition, or application, a request therefor shall be made in writing. Any party may make such request irrespective of his filing exceptions under § 502.228. If a brief on exceptions is filed, the request for oral argument shall be incorporated in such brief. Requests for oral argument on any motion, petition, or application shall be made in the motion, petition, or application, or in the reply thereto. Applications for oral argument will be granted or denied in the

discretion of the Commission, and, if granted, the notice of oral argument will set forth the order of presentation. Upon request, the Commission will notify any party of the amount of time which will be allowed him. Those who appear before the Commission for oral argument should confine their argument to points of controlling importance. Where the facts of a case are adequately and accurately dealt with in the initial, recommended, or tentative decision, parties should, as far as possible, address themselves in argument to the conclusions. Effort should be made by parties taking the same position to agree in advance of the argument upon those who are to present their side of the case, and the names of such persons and the amount of time requested should be received by the Commission not later than ten (10) days before the date set for the argument. The fewer the number of persons making the argument the more effectively can the parties' interests be presented in the time allotted.

**§ 502.242 Submittal to Commission for final decision.**

A proceeding will be deemed submitted to the Commission for final decision as follows: (a) If oral argument is had, the date of completion thereof, or if memoranda on points of law are permitted to be filed after argument, the last date of such filing; (b) if oral argument is not had, the last date when exceptions or replies thereto are filed, or if exceptions are not filed, the expiration date for such exceptions; (c) in the case of an initial decision, the date of notice of the Commission to review the decision, if such notice is given.

**Subpart O—Reparation**

**§ 502.251 Proof on award of reparation.**

If many shipments or points of origin or destination are involved in a proceeding in which reparation is sought, the Commission will determine in its decision the issues as to violations, injury to complainant, and right to reparation. If complainant is found entitled to reparation, the parties thereafter will be given an opportunity to agree or make proof respecting the shipments and pecuniary amount of reparation due before the order of the Commission awarding reparation is entered. In such cases, freight bills and other exhibits bearing on the details of all shipments, and the

amount of reparation on each, need not be produced at the original hearing unless called for or needed to develop other pertinent facts.

**§ 502.252 Reparation statements.**

When the Commission finds that reparation is due, but that the amount cannot be ascertained upon the record before it, the complainant shall immediately prepare a statement in accordance with the approved reparation statement in Appendix II (4), showing details of the shipments on which reparation is claimed. This statement shall not include any shipments not covered by the findings of the Commission. Complainant shall forward the statement, together with the paid freight bills on the shipments, or true copies thereof, to the carrier or other person who collected the charges for checking and certification as to accuracy. Statements so prepared and certified shall be filed with the Commission for consideration in determining the amount of reparation due. Disputes concerning the accuracy of amounts may be assigned for conference by the Commission, or in its discretion referred for further hearing.

**Subpart P—Reopening of Proceedings**

**§ 502.261 Reopening by Commission and modification or setting aside of report or order.**

Upon petition or its own motion, the Commission may at any time after reasonable notice, reopen any proceeding under these rules for rehearing, reargument, or reconsideration and, after opportunity for hearing, may alter, modify, or set aside in whole or in part its report of findings or order therein if it finds such action is required by changed conditions in fact or law or by the public interest.

**§ 502.262 Petition for reopening.**

A petition for reopening for the purpose of reargument, reconsideration, or to take further evidence shall be made in writing, shall state the grounds relied upon, and shall conform to the requirement of Subpart H in this part. If the petition be to take further evidence, the nature and purpose of the new evidence to be adduced shall be briefly stated, and it shall appear that such evidence was not available at the time of the prior hearing. If the petition be for reargument or reconsideration, the matter claimed to

have been erroneously decided shall be specified and the alleged errors briefly stated. In case of unforeseen emergency, satisfactorily shown by the petitioner, request for modification of rules or orders may be made by telegram or otherwise, upon notice to all parties or attorneys of record, but such request shall be followed by a petition filed and served in accordance with Subpart H in this part.

#### § 502.263 Stay of rule or order.

No petition for reopening or allowance thereof, except by special order of the Commission, shall operate as a stay of any rule or order entered by the Commission, except that pending judicial review, and where it finds that justice so requires, the Commission may postpone the effective date of any action taken by it.

#### § 502.264 Time for filing petition to reopen.

Except for good cause shown, and upon leave granted, petition to reopen under § 502.262 shall be filed with the Commission within thirty (30) days after the date of service of the Commission's final decision or order in the proceeding, unless a shorter period is fixed under § 502.104.

#### § 502.265 Reply to petition to reopen.

Replies to petitions filed pursuant to § 502.262 shall conform to the requirements of § 502.75.

### Subpart Q—Judicial Review

#### § 502.271 Appeal from initial decision necessary before judicial review.

Any party not satisfied with the initial decision of a hearing officer shall appeal same to the Commission, by filing exceptions thereto, before such decision may be regarded as final for the purposes of judicial review. In the event of such appeal, the initial decision meanwhile shall be inoperative.

### Subpart R—Schedules and Forms

#### § 502.281 Schedule of information for presentation in regulatory cases; approved forms.

A schedule of information for presentation in regulatory cases, and approved forms, which were adopted by the Federal Maritime Board and Maritime Administration, were published in the FEDERAL REGISTER of June 11, 1953 (18

F.R. 3347-3349) and were incorporated in the edition of the rules available from the Government Printing Office as Appendices I and II. The schedule and forms are continued in effect by the Commission until such time as they are superseded or revoked.

### Subpart S—Non-Adjudicatory Investigations

#### § 502.291 Investigational policy.

The Federal Maritime Commission has extensive regulatory duties under the various acts it is charged with administering. The conduct of investigations is essential to the proper exercise of the Commission's regulatory duties. It is the purpose of this subpart to establish procedures for the conduct of such investigations which will insure protection of the public interest in the proper and effective administration of the law. The Commission encourages voluntary cooperation in its investigations where such can be effected without delay or without prejudice to the public interest. The Commission may, in any matter under investigation, invoke any or all of the compulsory processes authorized by law.

#### § 502.292 Initiation of investigations.

Commission inquiries and non-adjudicatory investigations are originated by the Commission upon its own motion when in its discretion the Commission determines that information is required for the purposes of rule making or is necessary or helpful in the determination of its policies or the carrying out of its duties, including whether to institute formal proceedings directed toward determining whether any of the laws which the Commission administers have been violated.

#### § 502.293 Order of investigation.

When the Commission has determined that an investigation is necessary, an Order of Investigation shall be issued and served on all parties named therein pursuant to § 502.61.

#### § 502.294 By whom conducted.

Investigations are conducted by Commission representatives designated and duly authorized for the purpose. Such representatives are authorized to exercise the duties of their office in accordance with the laws of the United States and the regulations of the Commission,

including the resort to all compulsory processes authorized by law, and the administration of oaths and affirmances in any matters under investigation by the Commission.

**§ 502.295 Investigational hearings.**

(a) Investigational hearings as distinguished from hearings in adjudicative proceedings, may be conducted in the course of any investigation undertaken by the Commission, including inquiries initiated for the purpose of determining whether or not a respondent is complying with an order of the Commission.

(b) Investigational hearings may be held before the Commission, one or more of its members, or a duly designated representative, for the purpose of hearing the testimony of witnesses and receiving documents and other data relating to any subject under investigation. Such hearings shall be stenographically reported and a transcript thereof shall be made a part of the record of investigation.

**§ 502.296 Compulsory processes.**

The Commission, or its designated representative may issue orders or subpoenas directing the person named therein to appear before a designated representative at a designated time and place to testify or to produce documentary evidence relating to any matter under investigation, or both. Such orders and subpoenas shall be served in the manner provided in § 502.133.

**§ 502.297 Depositions.**

The Commission, or its duly authorized representative, may order testimony to be taken by deposition in any investigation at any stage of such investigation. Such depositions may be taken before any person designated by the Commission having the power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence as provided in § 502.131.

**§ 502.298 Reports.**

The Commission may issue an order requiring a person to file a report or answers in writing to specific questions

relating to any matter under investigation.

**§ 502.299 Non-compliance with investigational processes.**

In case of failure to comply with Commission investigational processes appropriate action may be initiated by the Commission, including actions for enforcement by the Commission or the Attorney General and forfeiture of penalties or criminal actions by the Attorney General.

**§ 502.300 Rights of witness.**

Any person required to testify or to submit documentary evidence shall be entitled to retain or, on payment of lawfully prescribed cost, procure a copy of any document produced by such person and of his own testimony as stenographically reported or, in the depositions, as reduced to writing by or under the direction of the person taking the deposition, except that in a non-public proceeding a witness may for good cause be limited to an inspection of his testimony. Any party compelled to testify or to produce documentary evidence may be accompanied and advised by counsel, but counsel may not, as a matter of right, otherwise participate in the investigation.

**§ 502.301 Non-public proceedings.**

Unless otherwise ordered by the Commission, all investigatory proceedings shall be non-public.

**§ 502.302 Referrals after investigation.**

Upon completion of investigation where the facts indicate that no corrective action by the Commission is warranted, the investigational files are closed. Where remedial action is appropriate, the files may be referred for the initiation of a formal adjudicatory proceeding, for negotiation of a stipulation to cease and desist, or for other appropriate action.

**PART 506—FOREIGN DISCRIMINATION AFFECTING U.S. SHIPS**

Sec.

506.1 Scope.

506.2 Imposition of equalization fees or charges.

506.3 Other off-setting regulations.

506.4 Discrimination in the U.S.-Uruguayan trade.

**AUTHORITY:** The provisions of this Part 506 issued under sec. 19, 41 Stat. 995, sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 876, 1114.